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9

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN JOSE DIVISION**  
13

14 **ROBERT GILSON, individually and on**  
15 **behalf of all others similarly situated,**

16 **Plaintiff,**

17 **v.**

18 **APPLE INC., a California Corporation,**

19 **Defendant.**  
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**Case No.**

**CLASS ACTION COMPLAINT FOR:**

1. **FRAUD AND DECEIT;**
2. **TRESSPASS TO CHATTEL;**
3. **VIOLATION OF CALIFORNIA'S  
UNFAIR COMPETITION LAW; and**
4. **UNJUST ENRICHMENT.**

**DEMAND FOR JURY TRIAL**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. JURISDICTION AND VENUE.....</b>	<b>2</b>
<b>III. INTRADISTRICT ASSIGNMENT .....</b>	<b>3</b>
<b>IV. PARTIES .....</b>	<b>3</b>
<b>V. FACTUAL BACKGROUND.....</b>	<b>4</b>
A. Apple's Proprietary iOS Operating System Is A Necessary Component In All iPhones.....	4
B. Apple Throttled iPhone Performance With its iOS 10.2.1 and 11 Updates .....	5
C. Apple is Forced to Acknowledge That It Designed iOS 10.2.1 and 11.2 To Throttle iPhone Performance .....	7
<b>VI. CLASS ACTION ALLEGATIONS .....</b>	<b>9</b>
COUNT ONE FRAUD AND DECEIT .....	10
COUNT TWO TRESSPASS TO CHATTELS .....	11
COUNT THREE VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200 ET SEQ.).....	12
COUNT FOUR UNJUST ENRICHMENT .....	13
PRAYER FOR RELIEF .....	14
JURY DEMAND .....	16

1 Plaintiff Robert Gilson (“Plaintiff”), on behalf of himself and all others similarly situated  
2 (the “Class,” as defined below), on personal knowledge with respect to facts pertaining to him  
3 and upon information and belief as to other matters, brings this class action complaint against  
4 Apple Inc. (“Apple”), alleging as follows:

5 **I. INTRODUCTION**

6 1. This action arises from Apple’s decision to withhold material information from  
7 iPhone users relating to the installation of software updates that were supposed to improve  
8 product performance. In fact, the software updates included software that “throttled” or slowed  
9 down the processing speed of the iPhones and caused a dramatic decline in performance. Apple  
10 then continued to conceal this information for almost a year, during which millions of iPhone  
11 users continued to install the software updates, including iOS 10.2.1 and 11.2. The update  
12 affected several models of Apple’s iPhones, including the iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7,  
13 and 7 Plus (collectively, the “Affected Phones”).

14 2. Apple also did not inform consumers that the sluggish performance they were  
15 experiencing could be addressed by replacing the battery. Rather, consumers were left to believe  
16 that their Affected Phones were no longer able to perform adequately and needed to be replaced.



25 3. Apple’s decision was a profitable one for the Company. As the Affected Phones  
26 were impacted by the software updates in 2017, Apple promoted and released three new iPhone  
27 models – the iPhone 8, iPhone 8 Plus, and iPhone X – which are priced from \$699 to upwards of  
28 \$1,000.

1           4.       On December 18, 2017, an independent researcher, John Poole from Primate  
2 Labs, reportedly discovered that Apple had installed the throttling software in certain iOS  
3 updates. Within days, Apple acknowledged that it had installed the throttling software into two  
4 updates, iOS 10.2.1 and 11.2. A week later, on December 28, 2017, Apple issued an “apology”  
5 for its conduct and offered to replace batteries in Affected Phones for a reduced price.<sup>1</sup>

6           5.       Since its apology, Apple has been under fire from customers, analysts, and  
7 government officials alike. Apple is now facing government inquiries in the United States and  
8 Europe regarding its undisclosed throttling practices. On January 9, 2018, the Chairman of the  
9 Senate Commerce Committee required Apple to disclose further details about how it tracked  
10 customer complaints of processing performance and the basis for its decision to throttle back  
11 iPhone processing performance. Similarly, in France, the Paris prosecutor’s office reportedly  
12 opened an investigation into Apple for potential deception and “programmed obsolescence,”  
13 following a complaint by a French consumer group alleging that Apple pressured customers to  
14 buy new phones by timing the release of new models with operating system upgrades that caused  
15 older ones to perform less well. Analysts at Barclays reportedly said that Apple could sell 16  
16 million fewer iPhones this year, and lose over \$10 billion in revenue, because of customers  
17 choosing to replace batteries instead of their iPhones.

## 18   **II. JURISDICTION AND VENUE**

19           6.       This Court has original jurisdiction of this action under 28 U.S.C. § 1332(d)(2).  
20 The matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and  
21 costs. At least one proposed Class member is a citizen of a state different from Apple.

22           7.       This Court has personal jurisdiction over Apple, which is incorporated under  
23 California law and is headquartered in Cupertino, California.

24           8.       Venue is proper in this Court under 28 U.S.C. § 1391. Apple resides in, and has  
25 its most significant contacts with, the Northern District of California. A substantial part of the  
26 events or omissions giving rise to the claims alleged herein occurred in this judicial district.

27 \_\_\_\_\_  
28 <sup>1</sup> Apple website, “A Message to Our Customers about iPhone Batteries and Performance,”  
December 28, 2017, available at: <https://www.apple.com/iphone-battery-and-performance/>.

1 **III. INTRADISTRICT ASSIGNMENT**

2 9. Assignment to the San Jose Division is appropriate under Local Civil Rule 3-2(c)  
3 and (e) A substantial part of the events or omissions which give rise to the claims alleged herein  
4 occurred at Apple's headquarters, which is located in Santa Clara County.

5 **Apple headquarters in Cupertino, California**



13 **IV. PARTIES**

14 10. Plaintiff Robert Gilson resides in San Mateo County, California, and purchased an  
15 iPhone 6 Plus. Plaintiff updated his phone's software to iOS 10.2.1 and subsequently  
16 experienced a significant decline in its processing speed.

17 11. Defendant Apple is a California incorporated company headquartered at 1 Infinite  
18 Loop, Cupertino, California, 95014. The Company designs, manufactures and markets mobile  
19 communication and media devices, including the iPhone line of phones. Apple also sells a  
20 variety of software, services, and accessories for use with iPhones.

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## V. FACTUAL BACKGROUND

### A. APPLE'S PROPRIETARY IOS OPERATING SYSTEM IS A NECESSARY COMPONENT IN ALL IPHONES

12. Apple introduced the first iPhone in 2007. From 2007 to the present, Apple has introduced 18 models of the iPhone.<sup>2</sup>



**iPhones models released from 2007-early 2017**

13. All iPhones run on Apple's proprietary iOS system software. The first version of iOS was released by Apple in June 2007.

14. Over the past decade, Apple has updated iOS multiple times, usually to add new iPhone features or to fix software bugs. Apple releases a new version of iOS about once per year, generally coinciding with the introduction of Apple's newest iPhone model. Consumers have grown accustomed to updating their iPhones to the most recent iOS to maintain and enhance the device's functionality. Consumers also rely on Apple to update the software only in ways that improve the iPhone.

<sup>2</sup> Paiching Wei, "10 years of iPhones: A timeline showing the phone's evolution," *The Mercury News*, January 2017, available at: <https://www.mercurynews.com/2017/01/07/10-years-of-iphones-a-timeline/>; see also Apple press release dated September 12, 2017, "iPhone 8 and iPhone 8 Plus: A new generation of iPhone," available at: <https://www.apple.com/newsroom/2017/09/iphone-8-and-iphone-8-plus-a-new-generation-of-iphone/> and Apple press release dated September 12, 2017, "The future is here: iPhone X," available at: <https://www.apple.com/newsroom/2017/09/the-future-is-here-iphone-x/>.

15. The versions of iOS at issue in this litigation include iOS 10.2.1 and iOS 11.<sup>3</sup>

**B. APPLE THROTTLED IPHONE PERFORMANCE WITH ITS iOS 10.2.1 AND 11 UPDATES**

16. In the **Fall of 2016**, Apple received multiple reports of its iPhone 6, 6 Plus, 6s, and 6s Plus devices unexpectedly shutting down.<sup>4</sup> The phones remained inoperable until plugged into a charger.<sup>5</sup> The public backlash led Apple to initiate its “iPhone 6s Program for Unexpected Shutdown Issues” on **November 20, 2016**.<sup>6</sup>

17. Two months later, on **January 23, 2017**, Apple sent users of Affect Phones a notification of software update, iOS 10.2.1. Among other things, Apple indicated that the iOS 10.2.1 update would “improve[] power management during peak workloads to avoid unexpected shutdowns[.]”<sup>7</sup>

18. On **February 23, 2017**, Apple provided a statement to technology publication *TechCrunch*, affirming that iOS 10.2.1 had fixed the shutdown problem:

With iOS 10.2.1, Apple made improvements to reduce occurrences of unexpected shutdowns that a small number of users were experiencing with their iPhone. iOS 10.2.1 already has over 50% of active iOS devices upgraded and the diagnostic data we’ve received from upgraders shows that for this small percentage of users experiencing the issue, we’re seeing a more than 80% reduction in iPhone 6s and over 70% reduction on iPhone 6 of devices unexpectedly shutting down.

<sup>3</sup> Apple website, “About the security content of iOS 11.2.1,” dated December 13, 2017, available at: <https://support.apple.com/en-us/HT208357>.

<sup>4</sup> Liam Tung, “iPhone 6, 6s sudden shutdown? We’ve almost fully cured issue with iOS 10.2.1, says Apple,” ZDNet, February 24, 2017, available at: <http://www.zdnet.com/article/iphone-6-6s-sudden-shutdown-weve-almost-fully-cured-issue-with-ios-10-2-1-says-apple/>.

<sup>5</sup> *Id.*

<sup>6</sup> Apple website, “iPhone 6s Program for Unexpected Shutdown Issues,” information as of November 30, 2016, available at: <https://www.apple.com/au/support/iphone6s-unexpectedshutdown/>.

<sup>7</sup> Apple website, “Download iOS 10.0-iOS 10.3.3 Information,” available at: [https://support.apple.com/kb/DL1893?locale=en\\_US](https://support.apple.com/kb/DL1893?locale=en_US).

1 We also added the ability for the phone to restart without needing  
 2 to connect to power, if a user still encounters an unexpected  
 shutdown...<sup>8</sup>

3  
 4 19. However, throughout 2017, Apple failed to inform consumers that this remedy  
 5 came with a significant – and undisclosed – tradeoff. To address the sudden shutdown problem,  
 6 iOS 10.2.1 significantly slowed the processing speed of the Affected Phones. Neither the  
 7 software update notification nor the software update release notes made any mention of this  
 8 throttling effect. As a result, when performance of Affected Phones significantly declined,  
 9 consumers were left to believe that their device had reached the end of its useful life and needed  
 10 to be replaced.

11 20. Apple is known for its loyal consumers who stay with the iPhone product line  
 12 when it is time to purchase a new device. An April 2017 survey found that “Ninety-two  
 13 percent of US iPhone users who plan to upgrade their phone in the next year plan to repurchase  
 14 an iPhone, up from 86% the year before.”<sup>9</sup> Thus, Apple knew that Plaintiff and the Class  
 15 members were likely to replace their Affected Phones with a newer model of the iPhone.

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 25 <sup>8</sup> Matthew Panzarino, “Apple says iOS 10.2.1 has reduced unexpected iPhone 6s shutdown  
 26 issues by 80%,” *TechCrunch*, February 23, 2017, available at:  
[https://techcrunch.com/2017/02/23/apple-says-ios-10-2-1-has-reduced-unexpected-iphone-6s-](https://techcrunch.com/2017/02/23/apple-says-ios-10-2-1-has-reduced-unexpected-iphone-6s-shutdown-issues-by-80/)  
[shutdown-issues-by-80/](https://techcrunch.com/2017/02/23/apple-says-ios-10-2-1-has-reduced-unexpected-iphone-6s-shutdown-issues-by-80/)

27 <sup>9</sup> Thomas Frank, “Higher prices will actually boost iPhone demand, not hurry it, Morgan Stanley  
 28 predicts,” CNBC, September 19, 2017, quoting Morgan Stanley analyst Katy Huberty, available  
 at: [https://www.cnbc.com/2017/09/19/higher-prices-will-actually-boost-iphone-demand-morgan-](https://www.cnbc.com/2017/09/19/higher-prices-will-actually-boost-iphone-demand-morgan-stanley.html)  
[stanley.html](https://www.cnbc.com/2017/09/19/higher-prices-will-actually-boost-iphone-demand-morgan-stanley.html)

21. Indeed, following implementation of iOS 10.2.1, Apple introduced some of its most expensive iPhones ever. On **September 12, 2017**, Apple revealed three new models: iPhone 8, 8 Plus, and X.<sup>10</sup> Pricing for the iPhone 8 and 8 Plus started at \$699, while the iPhone X had a base price of \$999.



iPhone 8 and iPhone 8 Plus



iPhone X

**C. APPLE IS FORCED TO ACKNOWLEDGE THAT IT DESIGNED iOS 10.2.1 AND 11.2 TO THROTTLE IPHONE PERFORMANCE**

22. Beginning on **December 18, 2017**, a series of reports were issued by independent sources concluding that the iOS 10.2.1 and iOS 11.2 software updates had caused the Affected Phones to slow down in performance. The most prominent report was published by John Poole of Primate Labs, who reportedly analyzed 100,000 iPhones and concluded that the decrease in performance of the Affected Phones was caused by the iOS 10.2.1 and iOS 11.2 updates, and not the normal decreased function that would be caused by an aging battery.<sup>11</sup>

<sup>10</sup> Apple press release, "iPhone 8 and iPhone 8 Plus: A new generation of iPhone," September 12, 2017, available at: <https://www.apple.com/newsroom/2017/09/iphone-8-and-iphone-8-plus-a-new-generation-of-iphone/>; Apple press release, "The future is here: iPhone X," September 12, 2017 <https://www.apple.com/newsroom/2017/09/the-future-is-here-iphone-x/>.

<sup>11</sup> John Poole, "iPhone Performance and Battery Age," December 18, 2017, available at <https://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/>.

23. On December 20, 2017, Apple admitted to the *TechCrunch* website that the iOS 10.2.1 and iOS 11.2 software updates included a “throttling” feature to slow down older iPhone models and prolong their life. Apple stated that lithium ion batteries used in iPhones degraded over time “which can result in the device unexpectedly shutting down to protect its electronic components.”<sup>12</sup>

24. However, as reported by *Wired* magazine, because iPhone users were never told of the throttling feature, they were never given the choice of just fixing their batteries rather than losing performance: “Rather than quietly push out an update that crimped older iPhones, it should have made that throttling opt-in. As it stands, there’s no way to avoid having your phone slowed down once the battery reaches its limits. By giving users the choice, and giving them the information necessary to make their own decision, Apple could avoid the frustrations many have expressed over the policy. While making the throttling opt-in could cause performance issues for users who opt-out, it would give users a sense of control over the situation and avoid making them feel like they’re being tricked into buying a new phone. As it stands, Apple’s move comes off a deceptive.”<sup>13</sup> Moreover, the new software updates did not reverse the battery degradation.

25. On December 28, 2017, Apple released an “apology” and acknowledged that the iOS 10.2.1 software update first delivered in January 2017, as well as the more recent iOS 11.2 software update, had negatively impacted performance of their phones:

About a year ago in iOS 10.2.1, we delivered a software update that improves power management during peak workloads to avoid unexpected shutdowns on iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and iPhone SE. **With the update, iOS dynamically manages the maximum performance of some system components** when needed to prevent a shutdown. While these changes may go unnoticed, in some cases users **may experience longer launch times for apps and other reductions in performance.** (Emphasis added.)

<sup>12</sup> Paul Santos, “Apple: All You Wanted To Know On The iPhone Throttling Scandal,” *Seeking Alpha*, December 26, 2017, available at <http://www.seekingalpha.com/article/41333931-apple-wanted-know-iphone-throttling-scandal>.

<sup>13</sup> Jordan McMahan, “Apple Had Way Better Options Than Slowing Down Your Phone,” *Wired*, December 21, 2017, available at <http://www.wired.com/story/apple-iphone-battery-slow-down/>.

26. Notably, Apple did not address, nor deny, the fact that it never asked users for their authorization to slow down their phones, nor inform them of this change.<sup>14</sup> As a result, Plaintiff and other Class members were not notified when the power management technique was taking effect and were deceived into thinking that their iPhones were no longer capable of providing an adequate level of performance.

## **VI. CLASS ACTION ALLEGATIONS**

27. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), Plaintiff brings this action individually and on behalf of a Class defined as follows:

All persons and entities in the United States who own or have owned an iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7, or 7 Plus and installed iOS 10.2.1 or 11.2 on their iPhone.

Excluded from the Classes are Apple and any entity in which Apple has a controlling interest, as well as Apple's officers, directors, and employees, and their legal representatives, heirs, successors, or assigns.

28. Members of the Class are so numerous that joinder is impracticable. Apple sold tens of millions of the Affected Phones in the United States, and Apple has records of owners.

29. There are questions of law or fact common to the Class including, but not limited to, the following:

- a. Whether Apple misrepresented and/or failed to adequately disclose that installing iOS 10.2.1 and 11.2 would negatively impact performance of an Affected Phone.
- b. Whether and to what extent iOS 10.2.1 and 11.2 impacted performance of the Affected Phones;
- c. Whether Defendant purposefully or knowingly designed iOS 10.2.1 and 11.2 to impact performance of the Affected Phones;
- d. Whether Defendant informed customers that the decline in the Affected Phones' performance attributable to iOS 10.2.1 and 11.2 could be remedied by replacing the battery; and

<sup>14</sup> Apple website, "A Message to Our Customers about iPhone Batteries and Performance," dated December 28, 2017, available at: <https://www.apple.com/iphone-battery-and-performance/>.

1 e. Whether and to what extent the detrimental aspects of iOS 10.2.1 and 11.2 were  
2 also present in versions of the operating system subsequent to iOS 10.2.1 and  
3 11.2.

4 30. Plaintiff's claims are typical of the claims of the Class. Plaintiff and all Class  
5 members were damaged by the same wrongful practices of Apple.

6 31. Plaintiff will fairly and adequately represent the interests of the Class members.  
7 Plaintiff is a member of the proposed Class he seeks to represent. Plaintiff's interests are aligned  
8 with, and not antagonistic to, those of the Class. Plaintiff has retained counsel competent and  
9 experienced in complex class action litigation.

10 32. Proceeding as a class action is superior to other available methods for fairly and  
11 efficiently adjudicating the controversy. Prosecuting separate actions by individual Class  
12 members would create a risk of inconsistent or varying adjudications with respect to individual  
13 Class members that would establish incompatible standards of conduct for Apple. Moreover,  
14 Apple has acted or refused to act on grounds that apply generally to the Class, so that final  
15 injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a  
16 whole. Additionally, questions of law or fact common to Class members predominate over any  
17 questions affecting only individual Class members. Plaintiff knows of no special difficulty  
18 maintaining this action that would preclude its maintenance as a class action.

19 **COUNT ONE**

20 **FRAUD AND DECEIT**

21 33. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set  
22 forth herein.

23 34. The Affected Phones contain Apple's proprietary iOS operating system. Apple  
24 intentionally designed the iOS 10.2.1 and 11.2 software updates to throttle performance on the  
25 Affected Phones under certain conditions. The throttling was intended by, and known to, Apple  
26 at the time it released iOS 10.2.1 and 11.2, but was not disclosed to Plaintiff and the Class.

27 35. Plaintiff and the Class members relied on the representation that the iOS 10.2.1  
28 software update contained only bug fixes and security improvements. Apple concealed that iOS

1 10.2.1 also was designed to throttle the processor speed under certain battery conditions.

2 36. Plaintiff and the Class members reasonably relied on the representations and  
3 omissions made in the software update descriptions and notifications provided by Apple. Prior  
4 to downloading iOS 10.2.1 and 11.2, Plaintiff and the Class members did not have access to  
5 material facts informing them of the throttling feature. Had the truth been known, Plaintiff and  
6 the Class members would not have installed iOS 10.2.1 and 11.2 because adequate processing  
7 speed is essential to the proper functioning of the Affected Phones.

8 37. As a direct and legal result of the Apple's deception, Plaintiff and the Class  
9 members were harmed. By downloading iOS 10.2.1 and 11.2, performance of their Affected  
10 Phones was negatively impacted.

11 38. Apple's wrongful acts were done maliciously, oppressively, deliberately, and with  
12 intent to defraud Plaintiff and the Class members. As a result, Plaintiff and the Class members  
13 seek punitive damages.

14 **COUNT TWO**

15 **TRESSPASS TO CHATTELS**

16 39. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set  
17 forth herein.

18 40. Plaintiff and the Class members owned, possessed or had a right to possess the  
19 Affected Phones as their personal property.

20 41. Through the design and resulting installation of iOS 10.2.1 and 11.2 software  
21 updates on the Affected Phones, Apple intentionally interfered with Plaintiff's and Class  
22 members' use or possession of the Affected Phones and also damaged the Affected Phones.  
23 Plaintiff and Class members did not consent to such interference and was harmed.

24 42. Apple's conduct was a substantial factor in causing Plaintiff and Class members  
25 to suffer harm.

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**COUNT THREE****VIOLATION OF CALIFORNIA'S****UNFAIR COMPETITION LAW (Cal. Bus. & PROF. Code § 17200, et seq.)**

43. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

44. California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*) is designed to protect consumers from unlawful, unfair, or fraudulent business acts or practices, including the use of any deception, fraud, false pretense, misrepresentation, or the concealment, suppression, or omission of any material fact.

45. Apple has engaged, and continues to engage, in **unfair** business practices with regard to software updates to its operating system. Apple designed iOS 10.2.1 and 11.2 in a manner that materially diminishes the speed and performance of the Affected Phones. Apple failed to inform consumers of the reasons for the intentionally-implemented decline in performance. Apple also failed to inform consumers that substantially faster processing speeds could be restored by replacing the battery. Apple's conduct is unfair because it was substantially injurious to consumers, and is immoral, unethical, oppressive, or unscrupulous. Apple's conduct is not outweighed by any countervailing benefits to consumers.

46. Apple's conduct is **fraudulent** because Apple represented that the iOS 10.2.1 and 11.2 software updates contained only bug fixes and security improvements, and concealed that the updates were also designed to and did throttle the processor speed under certain battery conditions.

47. Apple's conduct and the harm it caused, and continues to cause, is not reasonably avoidable by Plaintiff and the Class members. Apple knew or had reason to know that Plaintiff and the Class members could not have reasonably known or discovered the existence of the performance problems that installing iOS 10.2.1 and 11.2 would cause.

48. Had Plaintiff and the Class members known that iOS 10.2.1 and 11.2 would substantially and negatively impact the performance of the Affected Phones, they would not have installed that software update.

49. Apple's unfair and fraudulent business practices directly and proximately caused damage to Plaintiff and the Class members.

50. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order: (a) requiring Apple to cease the deceptive and unfair business practices alleged herein; (b) requiring Apple to restore to Plaintiff and the Class members any money acquired by means of the deceptive and unfair business practices (restitution); and (c) awarding reasonable costs and attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

**COUNT FOUR**

## UNJUST ENRICHMENT

51. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

52. Plaintiff and other Class members paid substantial sums of money to buy the Affected Phones. Apple has also received revenue from customers who replaced their Affected Phones with newer models after being misled to believe that the Affected Phones had reached the end of their useful lives. Additionally, Apple has received revenue from consumers who have paid to replace the batteries in the Affected Phones.

53. Apple knew that the revenue realized by Apple came at the direct expense of Plaintiff and the Class members.

54. Apple accepted the revenue under circumstances that made it inequitable for Apple to retain the benefit.

55. Plaintiff and the Class members have been, and continue to be, damaged by Apple's actions and Apple has been unjustly enriched thereby. Plaintiff and the Class members are therefore entitled to disgorgement of the revenue Apple received as a result of its wrongful conduct.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully requests that the Court:

- A. Determine that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3);
- B. Direct that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the Class;
- C. Appoint Plaintiff as the Class Representative;
- D. Appoint Plaintiff's counsel as Class Counsel;
- E. Enter judgment against Defendant and in favor of Plaintiff and the Class;
- F. Adjudge and decree that the acts alleged herein by Plaintiff and the Class against Defendant constitute a violation of California's Unfair Competition Law, and Apple was unjustly enrichment thereby;
- G. Award all compensatory and statutory damages to Plaintiff and the Class in an amount to be determined at trial;
- H. Award restitution, including the disgorgement of all money or other financial benefit realized by Apple as a result of its wrongful conduct, payable to Plaintiff and the Class members;
- I. Award punitive damages, including treble and/or exemplary damages, in an appropriate amount;
- J. Enter an injunction permanently barring continuation of the conduct complained of herein;
- K. Award Plaintiff and the Class the costs incurred in this action together with reasonable attorneys' fees and expenses, including any necessary expert fees as well as pre-judgment and post-judgment interest; and

1 L. Grant such other and further relief as is necessary to correct for the effects of  
2 Defendant's unlawful conduct and as the Court deems just and proper.

3 Dated: January 10, 2018

**COTCHETT, PITRE & McCARTHY, LLP**

4 /s/ Mark C. Molumphy

5 **MARK C. MOLUMPY**

6 *Attorneys for Plaintiff and the Proposed Class*  
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**JURY DEMAND**

Plaintiff respectfully demands trial by jury on all issues so triable.

Dated: January 10, 2018

**COTCHETT, PITRE & McCARTHY, LLP**

/s/ Mark C. Molumphy

**MARK C. MOLUMPHY**

*Attorneys for Plaintiff and the Proposed Class*

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